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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREA MARIE RAMOS,

Defendant and Appellant.

D070165

(Super. Ct. No. SCS278617)

APPEAL from a judgment of the Superior Court of San Diego County, Ana L. Espana, Judge. Affirmed.

Tanya Dellaca, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Barry Carlton, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Andrea Marie Ramos pled guilty to one count of

transporting methamphetamine in violation of Health and Safety Code<sup>1</sup> section 11379, subdivision (a). In addition to imposing a four-year term of imprisonment, the court ordered that Ramos pay a drug program fee as provided under section 11372.7, subdivision (a) and a criminal laboratory analysis fee as provided under section 11372.5, subdivision (a). The amounts imposed—\$615 for the drug program fee and \$205 for the criminal laboratory analysis fee—appear to include penalty assessments under a number of statutory provisions. Relying on the holding and reasoning in *People v. Watts* (2016) 2 Cal.App.5th 223, 234-237 (*Watts*), Ramos argues the two fees are not penal in nature and, accordingly, not subject to imposition of a penalty assessment. We disagree with *Watts* and adhere to the well-established consensus, which treats the fees as fines subject to the penalty assessments.

## DISCUSSION

Penalty assessments apply to any "fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses" and increase such fines, penalties, or forfeitures by a specified amount. (E.g., Pen. Code, § 1464, subd. (a)(1); Gov. Code, § 76000, subd. (a)(1); see *Watts, supra*, 2 Cal.App.5th at p. 229 [identifying various penalty assessments].) Although Ramos did not object to the penalty assessments in the trial court, we may consider her argument on appeal because the erroneous imposition of penalty assessments is an unauthorized sentence that may be raised for the first time in this court. (*Watts*, at p. 227, fn. 4; see *People v. Anderson* (2010) 50 Cal.4th 19, 26; *People v. Walz* (2008) 160 Cal.App.4th 1364, 1369.)

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<sup>1</sup> All further statutory references are to the Health and Safety Code unless otherwise indicated.

As we indicated, Ramos contends the drug program fee and criminal laboratory analysis fee are not fines or penalties, and, therefore, the court should not have applied penalty assessments to them. However, the plain language of the statutes that impose both the drug program fee and criminal laboratory analysis fee describes the fees as fines. After specifying the amount of the drug program fee (\$150), section 11372.7, subdivision (a), states: "The court shall increase the total fine, if necessary, to include this increment, which shall be in addition to any other penalty prescribed by law." Similarly, after specifying the amount of the criminal laboratory analysis fee (\$50), section 11372.5, subdivision (a) states: "The court shall increase the total fine necessary to include this increment." If no other fine is applicable, "the court shall, upon conviction, impose a fine in an amount not to exceed fifty dollars (\$50), which shall constitute the increment prescribed by this section and which shall be in addition to any other penalty prescribed by law." (*Ibid.*)

Thus, under the plain terms of the two statutes, which largely govern us in any matter of statutory interpretation (see *People v. Prunty* (2015) 62 Cal.4th 59, 71), these fees are fines and penalties for purposes of imposing penalty assessments. The fact that the statutes also describe these amounts as fees is not dispositive.

As the People point out, the court in *People v. Sierra* (1995) 37 Cal.App.4th 1690, 1695 (*Sierra*) came to the same conclusion. In rejecting the defendant's argument, the court in *Sierra* stated: "[Defendant's] interpretation of Health and Safety Code section 11372.7 would lead to absurd consequences by reading out of that very section the fact that it is a fine and/or a penalty. So reading the statute, the trial court could not impose an otherwise mandatory penalty assessment. [Defendant's] interpretation does violence

to the express language of the statute and to the clear intent of the Legislature, and would lead to an absurd result." (*Id.* at p. 1696.) "The only reasonable interpretation of Health and Safety Code section 11372.7 is that it is a fine and/or a penalty to which the penalty assessment provisions of Penal Code section 1464 and Government Code section 76000 apply." (*Ibid.*) A host of courts followed *Sierra* and consistently treated the fees as fines subject to penalty assessments. (See *People v. Martinez* (1998) 65 Cal.App.4th 1511, 1522; *People v. Jordan* (2003) 108 Cal.App.4th 349, 368 [criminal laboratory analysis fee]; *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1256–1257 [same]; *People v. Sanchez* (1998) 64 Cal.App.4th 1329, 1332 [holding that the criminal laboratory analysis fee is a fine].) Importantly, the Supreme Court has likewise approved of penalty assessments in the context of a criminal laboratory analysis fee. (*People v. Talibdeen* (2002) 27 Cal.4th 1151, 1153 (*Talibdeen*).)

As Ramos points out, however, more recently *Watts*, *supra*, 2 Cal.App.5th 223 disagreed with this well-established consensus. *Watts* concluded the criminal laboratory analysis fee was not a fine or penalty and, therefore, not subject to penalty assessments. (*Id.* at p. 227.) In reaching this result, the *Watts* court criticized the reasoning of *Sierra*, *supra*, 37 Cal.App.4th 1690 and *People v. Martinez*, *supra*, 65 Cal.App.4th 1511 and, rather than criticizing the Supreme Court's discussion of the issue in *Talibdeen* (*Talibdeen*, *supra*, 27 Cal.4th 1151), found that discussion was not controlling. (*Watts*, at pp. 230–232.) With respect to the criminal laboratory analysis fee statute's use of the term "total fine," the *Watts* court stated: "[W]e fail to perceive how the fact that the crime-lab fee increases the 'total fine' necessarily means the fee is itself a 'fine' subject to penalty assessments. Nothing about the statute's use of the phrase 'total fine' is

inconsistent with the conclusion that the crime-lab fee simply gets added to the overall charge imposed on the defendant after penalty assessments are calculated." (*Id.* at p. 234.) Moreover, the *Watts* court found that its interpretation of the first paragraph of the statute was "controlling" over the second paragraph, which states the fee amount should be imposed as a "fine" if no other fine is applicable. (*Id.* at p. 237; see § 11372.5, subd. (a).).

We are not persuaded by *Watts*. Rather, we think we are bound by our Supreme Court's discussion of the issue in *Talibdeen*. In *Talibdeen*, the Supreme Court stated: "At sentencing, the trial court imposed, among other things, a laboratory analysis fee of \$50 pursuant to Health and Safety Code section 11372.5, subdivision (a). Although subdivision (a) of Penal Code section 1464 and subdivision (a) of Government Code section 76000 called for the imposition of state and county penalties based on such a fee, the trial court did not levy these penalties, and the People did not object at sentencing. Nonetheless, the Court of Appeal imposed the penalties because they were mandatory—and not discretionary—sentencing choices." (*Talibdeen, supra*, 27 Cal.4th at p. 1153, fns. omitted.) After noting that the penalty assessments were "called for" by statute, the Supreme Court in a footnote provided the applicable calculations: "Based on the \$50 laboratory fee, the state penalty would have been \$50 (see Pen. Code, § 1464, subd. (a)), and the county penalty would have been \$35 (see Gov. Code, § 76000, subd. (a))." (*Id.* at p. 1153, fn. 2.) Although the defendant in *Talibdeen* apparently did not dispute the issue, the Supreme Court expressly treated the fees as fines subject to penalty assessment. The Supreme Court stated: "Thus, at the time of sentencing, the trial court had no choice and had to impose state and county penalties in a statutorily determined amount on defendant.

The erroneous omission of these penalties therefore 'present[ed] a pure question of law with only one answer . . . .' [Citation.] Accordingly, we follow our lower courts and hold that the Court of Appeal properly corrected the trial court's omission of state and county penalties even though the People raised the issue for the first time on appeal." (*Id.* at p. 1157.) Even if we believed the issue was not fully litigated in *Talibdeen*, the Supreme Court's discussion of the issue is nonetheless authoritative.

Turning to *Watts*'s discussion of the criminal laboratory analysis fee statute itself, contrary to the *Watts*'s opinion, the reference to a "total fine" in the first paragraph of the statute plainly includes the laboratory fee as part of the defendant's fine. Moreover, the second paragraph of the criminal laboratory fee statute, even where it is not otherwise applicable, shows that the Legislature intended the criminal laboratory fee to constitute a fine. It would be absurd for the criminal laboratory fee to be a fine only when no other fine was applied. It must be the same in both situations. One paragraph need not "control over" the other, as *Watts* contends. (See *Watts, supra*, 2 Cal.App.5th at p. 234.) Instead, both paragraphs should be read together to determine the Legislature's intent.

*Watts* also relies *People v. Vega* (2005) 130 Cal.App.4th 183 (*Vega*), which did not consider penalty assessments. *Vega* instead considered whether the criminal laboratory analysis fee is "punishment" under Penal Code section 182, subdivision (a), relating to conspiracy liability. (*Vega*, at p. 194.) *Vega* held that the fee was not punishment for purposes of that statute, based on its analysis of the nature and purposes of the fee. (*Id.* at p. 195.) Six years later, *People v. Sharret* (2011) 191 Cal.App.4th 859 (*Sharret*) disagreed. It held that in the context of Penal Code section 654, the criminal laboratory analysis fee was punitive in nature. (*Sharret*, at p. 869.) We find *Sharret*

more well-reasoned than *Vega*, and, hence, we find *Watts's* reliance on *Vega* unpersuasive.

In sum, the statutes' characterization of the criminal laboratory analysis fee and drug program fee as part of the "total fine" and as "penalt[ies]" demonstrates the Legislature's intent that the fees are "fine[s]" or "penalt[ies]" under the statutes' governing penalty assessments. Nothing in the legislative history or other context justifies a departure from this plain language. The trial court therefore did not err by imposing penalty assessments on these fees imposed following Ramos's conviction.

#### DISPOSITION

The judgment of conviction is affirmed.

BENKE, Acting P. J.

WE CONCUR:

HUFFMAN, J.

AARON, J.